

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

YVONNE BLACK,)	
	Plaintiff,)
) No. 1:20-cv-1143
-v-)	
) Honorable Paul L. Maloney
ROBERT GORDON,)	
	Defendant.)
)	

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO AMEND
COMPLAINT, DISMISSING DEFENDANT'S MOTION TO DISMISS, AND
DENYING PLAINTIFF'S MOTION FOR IMMEDIATE DECLARATORY
JUDGMENT**

Plaintiff Yvonne Black, proceeding without the benefit of counsel, requests the Court immediately grant declaratory judgment. (ECF No. 16.) The Court will deny the motion. Plaintiff also filed a motion seeking leave to file a third amended complaint. (ECF No. 30.) The Court will grant the motion, with a warning. Finally, the Court will dismiss Defendant's motion to dismiss. (ECF No. 27.)

Plaintiff's lawsuit raises claims arising from the State's efforts to stop the spread of the COVID-19. Plaintiff sued Robert Gordon, then the Director of the Michigan Department of Health and Human Services (MDHHS), in his official capacity. Plaintiff alleges violations of both state and federal law. Before Gordon filed any response, Plaintiff filed an amended complaint. (ECF No. 5.) Plaintiff then filed a motion for leave to file a second amended complaint (ECF No. 14), which this Court granted (ECF No. 25.)

The controlling pleading is Plaintiff's second amended complaint. (ECF No. 25.) Gordon filed a motion to dismiss. (ECF No. 27.) Plaintiff has since filed the pending motion

for leave to file a third amended complaint. (ECF No. 30.) The Court has reviewed the proposed pleading. (ECF No. 30-1.) Plaintiff's proposed pleading includes at least three changes: (1) Plaintiff seeks to add Governor Gretchen Whitmer as a defendant; (2) Plaintiff adds facts which attempt to address Gordon's concerns about standing; and (3) Plaintiff add new claims.

Because Plaintiff has not established that Gordon consents to the amendment, Plaintiff must obtain court approval to amend her pleading. *See Fed. R. Civ. P. 15(a)(2).* The court rule states that leave to amend should be freely given when justice so requires. A court may, however, deny leave to amend a pleading when the proposed amendment "is brought in bad faith, for dilatory purposes, results in undue delay or prejudice to the opposing party, or would be futile." *Crawford v. Roane*, 53 F.3d 750, 753 (6th Cir. 1995).

The Court **GRANTS** Plaintiff's motion for leave to file a third amended complaint. (ECF No. 30.) The Court observes that proposed amendment adds facts that attempt to address Gordon's arguments concerning standing, among other things. Court cautions Plaintiff that future requests for leave to amend will be carefully reviewed and the Court may consider awarding costs associated with the filing of any motions that would have to be dismissed as a result of the amended pleading.

The Court **DISMISSES AS MOOT** Defendant Gordon's motion to dismiss. (ECF No. 27.) When filed, an amended complaint supersedes the original complaint, which becomes a nullity. *See Hayward v. Cleveland Clinic Found.*, 759 F.3d 601, 617 (6th Cir. 2014) (citing 6 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1476 (3d ed. 2010)); *Drake v. City of Detroit*, 266 F. App'x 444, 448 (6th Cir. 2008). An

amended complaint filed after a motion to dismiss has been filed renders the motion to dismiss moot. *See Bancoult v. McNamara*, 214 F.R.D. 5, 13 (D.D.C. 2003) (“Because the original complaint now is superseded by the amended complaint, the court denies without prejudice all pending motions pertaining to the original complaint.”).

Finally, the Court **DENIES** Plaintiff’s amended motion for immediate declaratory judgment. (ECF No. 16.) The Court previously denied (ECF No. 12) a similar motion and denies this motion for the same reasons. The Court observes that the pending motion was likely drafted and sent through the mail before Plaintiff had the benefit of the Court’s explanation denying her earlier motion.

IT IS SO ORDERED.

Date: January 26, 2021

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge